



LARRY WALKER
Auditor/Controller – Recorder

631 City of Ontario

RECORDING REQUESTED BY:

Mr. Gregory C. Devereaux, City Manager
City of Ontario
303 E. "B" Street
Ontario, California 91764

Doc#: 2008 – 0544746



Titles: 1 Pages: 38

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

WHEN RECORDED, MAIL TO:

City of Ontario
Records Management
303 East B Street
Ontario, CA 91764-4196

Exempt Recording Fees per Government Code Sections 6103 and 27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Assessor's Parcel Numbers 1049-421-01, 1049-421-02, & 1049-431-06 of Bryant Tract M.B. 12/55, Map Book 12, Page 55 as filed in the Office of the Recorder of said County. (DTSC site code: 400844)

This Covenant and Agreement ("Covenant") is made by and between the City of Ontario (the "Covenantor"), the current owner of property situated in City of Ontario, County of San Bernardino, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471

and Health and Safety Code section 25355.5, that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 9.8 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located at 1333 South Bon View Avenue in the City of Ontario, County of San Bernardino, State of California approximately one (1) mile southwest of Ontario Airport, 0.5 miles east of Euclid Avenue (State Highway 83) and approximately one (1) mile north of the Pomona Freeway (Freeway 60) as shown in the site location map attached as Exhibit C. The Property is a square parcel and consists of nine (9) buildings (with the rest of the area covered with a concrete pad) having a total area of 165,000 square feet. The Property is also generally described as San Bernardino County Assessor's Parcel Nos. 1049-421-01, 1049-421-02, & 1049-431-06 and depicted in the Parcel Map (Exhibit B), attached hereto and incorporated herein by this reference.

1.02. Historical uses at the Property include storage and repair of motor homes, distribution and finishing of automotive wheels and bumpers, and plating and metal manufacturing processes. The Property is currently occupied by Oakwood Interiors which is leasing the property and is using it for the manufacturing of furniture. In April 2007, the City of Ontario Public Works Department purchased the property and is currently using it as an equipment and vehicle storage yard. The City of Ontario Public Works Department is planning to convert it into Municipal Services Center offices and warehouses after which the furniture manufacturing activities will cease.

Plating and metal manufacturing operations were terminated on-site in March 1992, after approximately 27 years. These operations included a paint line, plating line, paint spray booth, casting and aluminum machining, a strip line, and a casting and manufacturing area. Two (2) former underground storage tanks (USTs), a 1,000-gallon gasoline UST and a

12,000-gallon diesel UST were located on the Property. These USTs were removed on January 14, 1987 under the supervision of the County of San Bernardino. The Property was vacant from 1992 until 1996. In 1966, the Bon View Corporation purchased the Property from the United States Bankruptcy court and converted the facility into an oak furniture manufacturing business.

1.03. The Department reviewed the Site Investigation (SI) report dated November 6, 2006. The SI report evaluates the historical information for indications of the past use or release of chemicals of concern (COCs) at the Property; establishes the nature of COCs that maybe present in soil or soil vapor at the Property, its concentrations and general extent; provides data to characterize the potential threat to public health and the environment posed by COCs at the Property using a commercial/industrial land-use scenario; and develops adequate data for performing a site-specific health risk assessment. According to the SI report, several environmental investigations and removal actions occurred at the Property in the past.

Presently, the contaminated media at the Property are the soil and soil vapor. The chemicals of potential concern (COPCs) in the soil were identified in the health risk assessment (HRA) (Clayton Group Services, A Bureau Veritas Company, 2007) to be arsenic, chromium (total), hexavalent chromium, and nickel. The COPCs in soil vapor were identified in the HRA to be chloroform, dibromochloromethane, tetrachloroethylene, and trichloroethylene. Maximum site concentrations of the COPCs, were reported in the HRA as follows:

- Arsenic (CAS # 7440-38-2): 22 mg/kg
- Chromium (CAS # 7440-47-3): 442 mg/kg
- Hexavalent chromium (Cr+6) (CAS# 18540-29-9): 75 mg/kg
- Nickel (CAS # 7440-02-0): 1719 mg/kg
- Chloroform (CAS# 67-66-3): 0.50 ug/L
- Dibromochloromethane (CAS # 124-48-1): 0.26 ug/L
- Tetrachloroethylene (PCE) (CAS # 127-18-4): 9.55 ug/L
- Trichloroethylene (TCE) (CAS # 79-01-6): 0.97 ug/L

1.04. The objective of the Site-Specific HRA was to assess future potential human health risks associated with the COPCs in the environmental media of interest at the Property under baseline (i.e., no further remedial action) conditions. The environmental media of concern were identified as soil, soil vapor, and air. Exposure pathways evaluated for outdoor worker receptors were incidental soil ingestion, dermal contact with soil, and inhalation of particulates and vapor in outdoor air. Exposure pathways evaluated for indoor worker receptors were incidental soil ingestion and inhalation of particulates and vapors in indoor air. The data presented in the HRA dated March 5, 2007 indicate that, for receptors associated with commercial and industrial land uses, the lifetime cancer risks associated with the COPCs currently existing at the Property range from 2×10^{-7} (0.2-in-one million) to 1×10^{-5} (10-in-one million) and are within or below the United States Environmental Protection Agency's (USEPA) acceptable risk range of $1\text{E-}06$ (1-in-one million) to $1\text{E-}04$ (100-in-one million) and are below the California Environmental Protection Agency's (CalEPA) Safe Drinking Water and Toxic Enforcement Act of 1986 de minimis risk level of 10-in-one million. The non-cancer Hazard Indices (HI) (which range from 0.15 to 0.19) are less than one (1), indicating that there is no potential for hazard health effects.

1.05. The future anticipated use of the Property is for commercial/industrial/municipal operation purposes. Based on the SI report and HRA, the Department concluded that use of the Property as a residence, hospital, or school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Property is a square parcel, approximately 9.8 acres (165,000 square feet). It is paved with existing 6-inch thick asphalt and concrete pads and occupies nine (9) buildings with concrete floors.

Due to the presence of chemicals of concern above residential standards, a land use covenant to restrict certain land uses (including but not limited to, residences, day care facilities, schools, hospitals or hospices, etc.) must be recorded with the San Bernardino County Recorder/Assessor's office in accordance with California Code of Regulations, title 22, section 67391.1. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion

of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code Section 25355.5, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of

this Covenant. Therefore, the Owner hereby covenants for himself and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Conditional Activities Requiring DTSC Notification. The following activities shall not be permitted without prior review and approval by DTSC:

Excavation activities proposed in the following areas of the Property will require that written notice be submitted to and approved by the Department: the three truck wells (one located north of Main Office Building 1 and two north of Storage Warehouse Building #4); the former small paint line immediately behind the main office building; the former foundry area; the former 1,000 gallon gasoline UGST; the former 12,000 gallon diesel UGST area; the former welding shop, the entire Building #8 including the plating shop, and the Catch Basin in Building #6. A map illustrating the locations of these areas is included in Exhibit D. Activities that may disturb these areas (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted without prior review and approval by the Department.

4.03. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with

the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.04. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval. The first report shall submit to the Department by February 15, 2009, and annually thereafter by February 15th of each year. The annual report, must include the dates, times, and names of those who conducted the annual inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

The Owner shall notify the Department of each of the following: (i) the type, cause, location, and proposed excavation activities in the areas identified in Section 4.02; and (ii) the type and date of proposed excavation activities. Notification to the Department shall be made as provided below within ten (10) working days of proposed excavation activities. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the

submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Mr. Gregory C. Devereaux, City Manager, City of Ontario - 1425 S. Bon View Avenue, Ontario, California 91761 - Attention: Public Works Director

To Department: Department of Toxic Substances Control, Ms. Rania Zabaneh, Project Manager, Brownfields and Environmental Restoration Program – Cypress Office, 5796 Corporate Avenue, Cypress, California 90630.

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

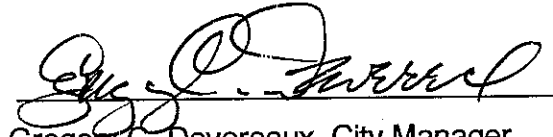
7.06 Statutory References. All statutory references include successor provisions.

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IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Gregory C. Devereaux, City Manager
City of Ontario
303 E. "B" Street
Ontario, California 91764

By:



Title: Gregory C. Devereaux, City Manager

Date:

10/3/08

ACKNOWLEDGEMENT

State of California)
County of San Bernardino)

On October 3, 2008 before me Eva Frame,
(insert name and title of the officer)

Notary Public, personally appeared Gregory C. Devereaux,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies) and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Eva Frame (Seal)



Department of Toxic Substances Control

By: _____

Title: Rania Zabaneh, Project Manager
Brownfields and Environmental Restoration Program
Cypress Office

Date: 10/10/08

ACKNOWLEDGEMENT

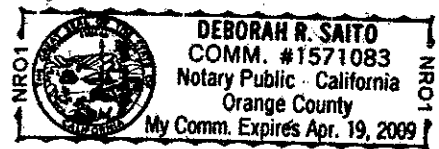
State of California)
County of Orange)

On October 10, 2008 before me Deborah R. Saito,
(insert name and title of the officer)

Notary Public, personally appeared Rania Zabaneh,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies) and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

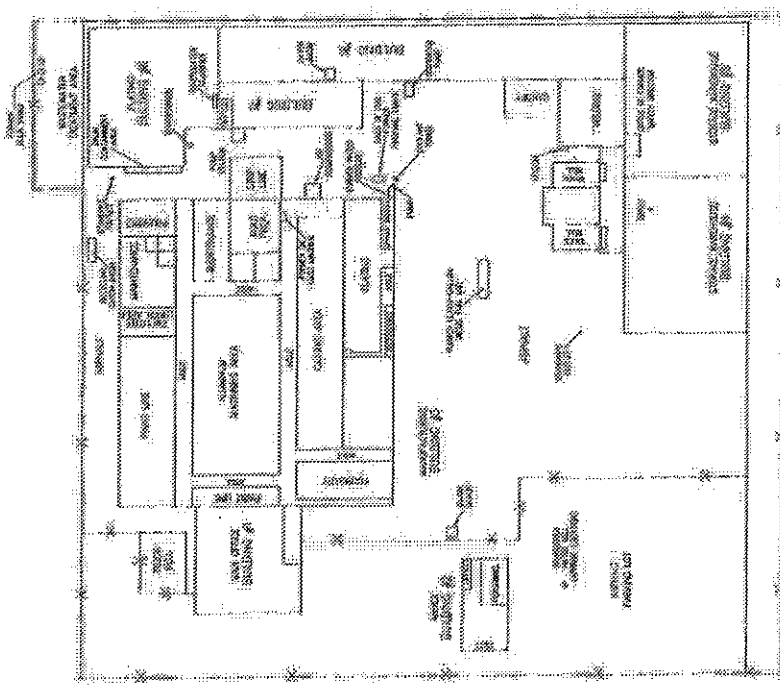
I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Deborah R. Saito (Seal)

EXHIBIT A



0 150
SCALE (FEET)

LEGEND
--- FACILITY BOUNDARY
--- FENCE

Charles County Services, Inc.
4000 Highway 100
Leesville, MS 38006
Phone: 662-833-1111
Fax: 662-833-1112
www.charlescounty.com

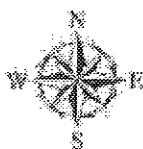
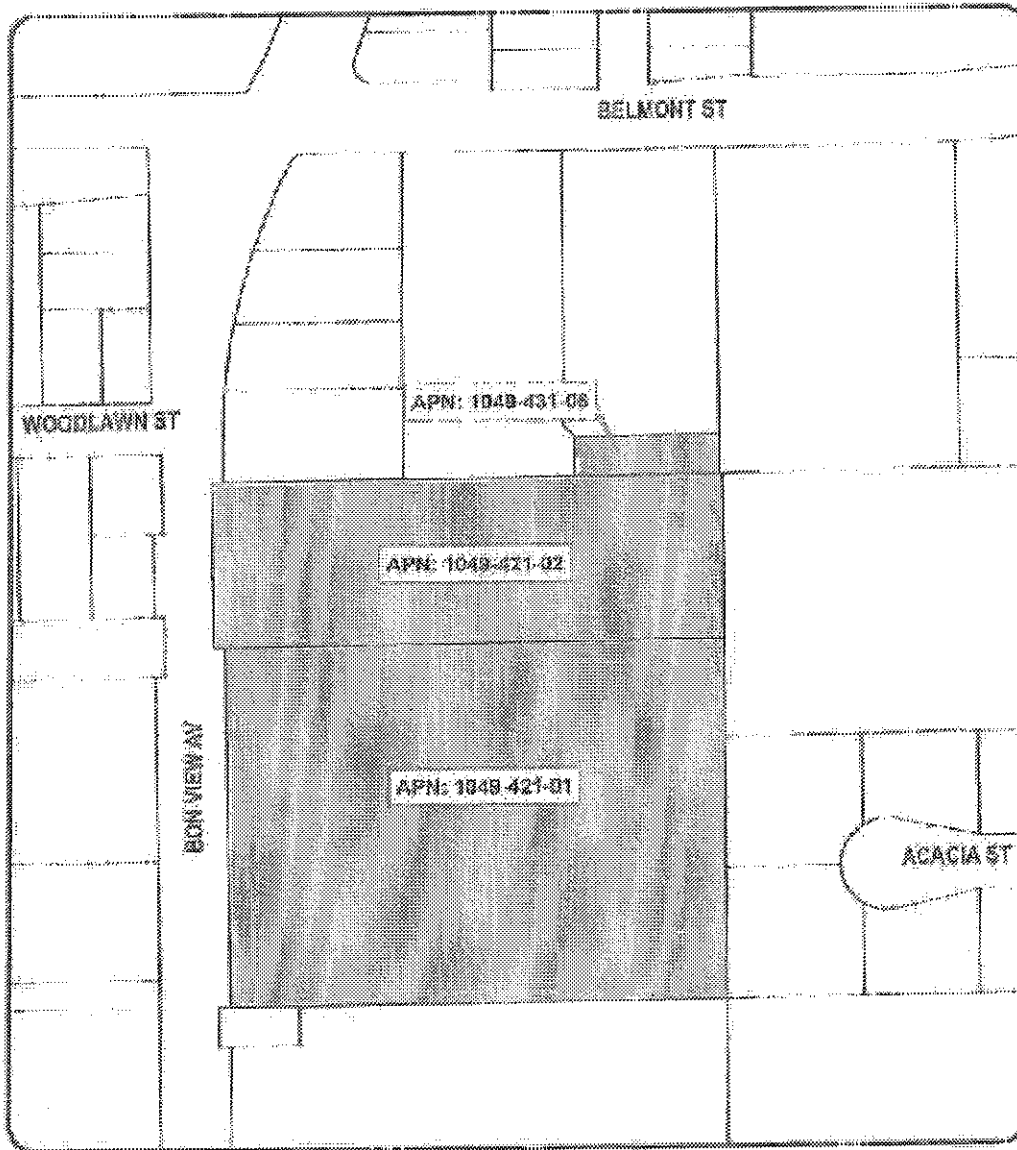
DATE: 04/17/08
DRAWN BY: JLR
CHECKED BY: JS
PROJECT NO.: 80-0006-03
C&G NO.: 10000-03

HISTORIC SITE PLAN SHOWING
HISTORIC FEATURES
QUINN INTERIORS
RE: FORMER DYNAMARK FACILITY
1323 SOUTH BOW VIEW AVENUE
ONTARIO, CALIFORNIA

FIGURE
2

EXHIBIT "A"

EXHIBIT B



APN PARCELS:
1049-431-06, 1049-421-02 AND 1049-421-01

EXHIBIT "B"

EXHIBIT C

EXHIBIT D

